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Robert R. Corbin

January 27, 1984

Dr. Jim Hartgraves
Department of Education
1535 West Jefferson
Phoenix, AZ 85007

Re: I84- 020 (R83-185)

Dear Dr. Hartgraves:

You have requested an opinion concerning whether a member of the State Board of Directors for Community Colleges ("the Board") may continue to serve on the Board after he ceases to be a resident of the county from which he was appointed.^{1/} For the reasons set forth below, we conclude that he may complete his term on the Board. If that member has been appointed to the State Board of Education pursuant to A.R.S. § 15-201, he may continue to serve in that position also.

The definition of "vacancy" as it applies to public officers is found in A.R.S. § 38-291,^{2/} which provides that:

1. The Community College Board consists of a member from each county, a representative of the Board of Regents, the Superintendent of Public Instruction and the Director of the Division of Vocational Education. A.R.S. § 15-1421.

2. The Arizona Supreme Court has held that Section 94, Revised Code of 1928, the predecessor of A.R.S. § 38-291, provides the exclusive criteria for determining when an office is vacant. State v. Moore, 49 Ariz. 51, 64-65, 64 P.2d 809, 815 (1937).

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An office shall be deemed vacant from and after the occurrence of any of the following events before the expiration of a term of office:

* * *

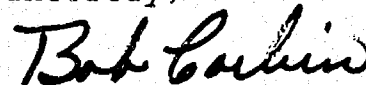
5. If the office is elective, ceasing to be a resident of the state, or, if the office is local or from a legislative or congressional district, ceasing to be a resident of the district, county, city, town or precinct for which he was elected, or within which the duties of his office are required to be discharged.

Before 1971, this statute provided that a vacancy occurred if the officer ceased to be a resident of the "district, county, city, town or precinct for which he was elected or appointed." When the Legislature amended this law in 1971, it removed all references to appointed positions. Laws 1971, Ch. 120. The deletion of any reference to appointed positions is evidence that the Legislature intended only for elected officials to forfeit their office when moving outside the area from which they were elected.

Unlike members of local school boards and community college districts boards who are elected by the voters in their localities, members of the State Board are appointed by the Governor. Since these are not elective offices, the vacancy definition in A.R.S. § 38-291 does not apply.

We therefore conclude that, while initially no member can be appointed to the State Board who resides in the same county as that of any other member of the Board, a change of county residency following appointment does not disqualify an individual from Board membership.

Sincerely,



BOB CORBIN
Attorney General

BC:VBW:pd